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GOVERNOR

STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE REGULATION
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
STANLEY "SKIP" PRUSS, DIRECTOR

KEN ROSS
COMMISSIONER

BILL ANALYSIS

BILL NUMBER: House Bill 4844, as introduced

TOPIC: Require insurers to deal fairly and in good faith in settlement of auto insurance claims

SPONSOR: Representative David Nathan

CO-SPONSORS: Representatives Lisa Brown, Jon Switalski, Dan Scripps, Sarah Roberts, Coleman Young, Douglas Geiss, Andrew Kandrevas, Alma Sheeler Smith, Vicki Barnett, Ellen Cogen Lipton, Shanelle Jackson, Fred Durhal, Jim Slezak, Bob Constan, Deb Kennedy, George Cushingberry, Jennifer Haase, Lesia Liss, Harold Haugh, Jeff Mayes, Kathy Angerer, Robert Dean, Bettie Scott, Tim Melton, Bert Johnson and Jimmy Womack

COMMITTEE: Insurance

Analysis Done: July 10, 2009

POSITION

The Office of Financial and Insurance Regulation (OFIR) supports this legislation.

PROBLEM/BACKGROUND

One of the touted benefits of the Essential Insurance Act (EIA) was to ensure that claims are settled promptly and that payments are received in a timely manner. However, if policyholders believe that their claims have been unfairly resolved and are unable to satisfactorily resolve the dispute themselves or with the assistance of OFIR, they must either settle for less than what they believe is appropriate or hire an attorney to pursue action against the insurer. The cost of this litigation often discourages individuals from pursuing action against the insurer, even if they believe they have been treated unfairly. Because insurance companies are not required to report detailed claims and litigation data, it is difficult for the Commissioner to effectively monitor on an ongoing basis whether insurance companies are fulfilling their obligations to their policyholders.

The Commissioner has the authority to take action if an insurance company is found to have engaged in methods of unfair competition or unfair or deceptive acts or practices that are prohibited by Chapter 20 of the Insurance Code. Unfair or deceptive acts or practices can include failing to attempt in good faith to effectuate prompt, fair and equitable settlements of

claims in which liability has become reasonably clear. However, there is no private cause of action under these provisions that would allow a claimant to recover damages, court costs and attorney fees against an insurer who fails to negotiate and settle an insurance claim in a timely manner and in good faith. Establishing such a cause of action and providing for specific damages would eliminate what some may perceive as a lack of good faith by insurance companies.

DESCRIPTION OF BILL

The proposed legislation would add Section 3149 to the Michigan Insurance Code to provide that, in addition to any other remedies, a claimant might also recover compensatory, consequential and exemplary damages should an insurer fail to negotiate and settle an insurance claim in good faith.

SUMMARY OF ARGUMENTS

Pro

An insurer should have to pay penalties in instances where it has been found to have failed to settle an insurance claim in good faith. When individuals go to court to seek remedy against insurance companies who do not settle their claims in good faith, the associated costs often far outweigh the amount they may receive in a judgment if they win the case. The costs often discourage individuals from pursuing action against the insurer, even if they have been treated unfairly. The availability of exemplary damages for individual claimants would act as a deterrent, and encourage insurers to settle claims in good faith.

Con

With limited exceptions, legal principles hold that damages are generally limited to the monetary value of the contract. Courts have held that exemplary damages are compensatory and not punitive.

Holding insurers to a different standard in breach of contract actions encourages the filing of lawsuits in the event a claimant is dissatisfied with an insurer's response to a claim. This could have a significant impact on rates if it has the effect of encouraging insurers to pay claims which they believe are not covered or pay higher amounts than they believe are justified in order to avoid expensive, time-consuming litigation.

FISCAL/ECONOMIC IMPACT

OFIR has identified the following revenue or budgetary implications in the bill:

(a) To the Office of Financial and Insurance Regulation:

Budgetary: OFIR may incur additional expense to ensure that consumers are aware of the amendments contained in this

legislation through mailings and/or updates to current consumer publications.

Revenue:
Comments:

(b) To the Department of Energy, Labor & Economic Growth: None known.

Budgetary:
Revenue:
Comments:

(c) To the State of Michigan: None known.

Budgetary:
Revenue:
Comments:

(d) To Local Governments within this State: None known.

Comments:

OTHER STATE DEPARTMENTS


None known.

ANY OTHER PERTINENT INFORMATION

The proposed legislation is similar to legislation that has been previously introduced.

ADMINISTRATIVE RULES IMPACT

The proposed legislation would amend the Michigan Insurance Code. OFIR has general rulemaking authority under the Insurance Code, 1956 PA 218.



Ken Ross
Commissioner



Date

